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CHHOTA

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

WRIT PETITION NO: 293 OF 2004

PETITIONER: Paras Nath aged about 42 years S/o Shri Tirath, working as Shot Firer, B Seam Colliery, PO: Khongapani, Dist: Korea (C.G).

Versus

RESPONDENTS:

1. South Eastern Coalfields Limited Through its Chairman-cum-Managing Director, Seepat Road, Bilaspur (C.G).

2. Chief Personnel Manager, South Eastern Coalfields Limited, Hasdeo Area, PO: South Jhagrakhand Colliery, Dist: Korea (C.G)

3. Chief General Manager, South Eastern Coalfields Limited, Hasdeo Area, PO: South Jhagrakhand Colliery, Dist: Korea (C.G).

4. Sub Area Manager, Jhagrakhand sub Area of SECL, Hasdeo Area, PO: Khongapani, Dist: Korea (C.G)

P. R. No. 22/4/04
Presented by Shri Bijay Dhiwedi
dated 22/4/04

R.

R.

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सत्य मेव जयते

amended as per court order dated 12-4-04

5. (5) Director General of Mines Safety S.E.C.L. Campus, Bilaspur (C.G.).

Attested 16/4/04

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 293/04

Paras Nath

Vs.

S.E.C.L. and three others.

O R D E R

Post for: 17/8/2004.

Sd/-
Fakhruddin
Judge

Judgement Seen
P. S. Koshy.
(Alok Bakshi)
C Vinay Hanoji

(129)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 293/04

Paras Nath

Vs.

S.E.C.L. and three others.

Shri Alok Bakshi, Advocate, for the petitioner.
Shri P.S. Nair, Sr. Advocate, with Shri P.S. Koshy and Shri Vinod Deshmukh, Advocates, for respondents no.1 to 4.
Shri Vinay Harit, Sr. Standing Counsel for respondent no.5.

O R D E R

Per Fakhruddin, J:

By this petition, the petitioner challenges the dismissal from service on the ground that he has been dismissed without holding a regular enquiry as contemplated under Certified Standing Orders.

2. Brief facts of the case are that the petitioner was posted as Shot Firer-cum-Mining Sirdar at B Seam Colliery of Jhagrakhand Sub Area S.E.C.L., Hasdeo Area, District Koriya. It is alleged that he was posted in blasting operation alongwith other workers. The petitioner contended that at the time of blasting, four Explosive Carriers namely Shri Rajendra, Shri Panna Ram, Shri Bishram and Shri Sheshman were placed at safe places to prevent any person directly coming before the face where shots are to be fired. It is further contended that after warning the workers to take safeguard, the above four persons have taken the appropriate shelter from the face where blasting had to be taken. It is

also contended that the petitioner has confirmed from above named Explosive Carriers that they had taken the shelter at safe places and every one is clear from the place to be blasted, he denoted the explosives and then found that Shri Panna Ram was not there. It is contended by him that subsequently he came to know that accident had occurred and Panna Ram had died.

3. It is contended by the petitioner that on 25-12-2003, a charge sheet was issued to him mentioning that he was negligent in blasting and due to that one Explosive Carrier could not get shelter in safe place and as a result of which he succumbed to death. It is further mentioned that the petitioner has committed misconduct of clauses 26.05 and 26.15 of Certified Standing Orders and the petitioner was granted 72 hours time to submit reply. It is also mentioned that since the charges are very serious in nature, the petitioner is hereby placed under suspension with immediate effect. Annexure-P/1 is the copy of the charge sheet. The petitioner submitted that he had filed the reply denying charges. The petitioner contended that he had taken due care and the blasting was done as per the rules, regulations and directions. He further contended that Panna Ram was negligent in moving within the time. Annexure-P/2 is the reply submitted by the petitioner.

4. It is also contended by the learned counsel for the petitioner that the petitioner was in employment under

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respondent No.1/Company from 1-1-1984. It is further contended that the petitioner had completed twenty years of service. It is also contended that without holding a regular enquiry as contemplated under Certified Standing Orders, the services of the petitioner have been terminated. It is contended that similarly situated persons against whom charge sheets have been issued are working and even their suspension has been revoked.

5. Return has been filed on behalf of respondent No.2. It is submitted that the case of respondents no.1 to 4 is that Panna Ram alongwith five other Carriers were deputed as Explosive Carriers with the petitioner. It is contended that at about 10.30 A.M. blasting was done. It is further contended that shots were fired by the petitioner, when Panna Ram was at the face to be blasted, without taking care to remove the persons from the blasting zone. Thereafter the body of the deceased was found. It is also contended that the petitioner was assisted by six Explosive Carriers, out of them Shri Rajendra was with the petitioner, Shri Ganesh and Shri Bishram were on Santri duty and they have confirmed that they have given okay signal before blasting and other two Explosive Carriers were not at the place of incident. It is contended that it is established that Panna Ram was at the face and was checking the connections, when the petitioner blasted the shots. The respondents contended that a preliminary enquiry was conducted and statement of the

petitioner was also recorded, who had confirmed that when he blasted the shots, he was not aware of any injury to anybody. It is further contended that when the fatal injury to Panna Ram was detected, the petitioner did not inform the Under Manager or Colliery Manager or Sub Area Manager, who were near the mines.

6. It is contended by the learned Senior counsel appearing for respondents no.1 to 4 that as the allegations against the petitioner are of serious nature, he was placed under suspension with immediate effect. It is further contended that the investigation was conducted by the Mines Safety Department and therein it was found by the Investigating Officer that the petitioner was responsible for the fatal accident. It is also contended that vide office order dated 30-12-2003, the services of the petitioner were terminated with immediate effect. It is submitted that as per Annexure-R/1 the detailed inquiry is being conducted by the I.S.O., S.E.C.L., and Officials from Directorate General of Mines Safety, Bilaspur Region, which is still pending.

7. Shri Vinay Harit, learned counsel appearing for respondent No.5 also submitted that so far as enquiry is concerned, it is with respect to safety, which is still pending. The opportunity was given but report was not submitted. It is further submitted that so far as conduct of the petitioner is concerned, it is governed by the Certified Standing Orders.

8. The parties do not dispute that the Certified Standing Orders are applicable. Clause 28 relates to procedure for imposition of penalties. Clause 28.1 stipulates that at the enquiry, the workman concerned shall be afforded reasonable opportunity of defending himself. The workman concerned shall be entitled to be represented or assisted by a co-worker or office bearer of a trade union of which he is a member if so requested by him during the enquiry. Clause 28.2 stipulates that during the period of enquiry the workman may be placed under suspension. The order of suspension pending enquiry shall be in writing and shall be followed by a charge sheet within three days setting out the misconduct alleged against him in case the charge sheet cannot be issued simultaneously. He shall not leave station without the permission of the management. Clause 28.5 stipulates that if after enquiry or conclusion of the criminal proceedings a workman is held guilty of the charges alleged against him or some other charges brought in the course of the enquiry or is convicted in the criminal proceedings and is consequently discharged or dismissed, he shall not be entitled to any remuneration for such period other than the subsistence allowance already paid to him. If a penalty other than dismissal, discharge or removal is imposed on him or he is exonerated of charges against him or he is not convicted in the criminal proceedings, he shall be paid the difference of the subsistence allowance already paid to him and the wages

which he would have got if he had not been suspended except in case where he is suspended not exceeding ten days, as a measure of punishment. Clause 28.10 stipulates that the proceedings of departmental enquiry shall be in writing. Where after the enquiry it is proposed to impose any punishment against a workman, a copy of the enquiry report shall be given to him. The workman shall also be given an opportunity to inspect the day to day record of enquiry proceedings.

9. The documents have been perused. Though the preliminary enquiry has been held but regular enquiry has not been held. The opportunity to cross-examine the witnesses has also not been given to the petitioner; even the witnesses have not been examined before him. The questions were put in preliminary enquiry and the petitioner has come out with his own version and denied that he is responsible. This can be done by regular inquiry. The documents also go to suggest that the similarly situated persons against whom charge sheets have been issued are working and even their suspension has been revoked.

10. Counsel were pointedly asked as to whether there is any provision or power to dispense with the inquiry like one, which is prescribed under Rule 19 (ii) or (iii) of the Civil Services (Classification, Control and Appeal) Rules, 1966. Shri Nair, learned Senior Counsel appearing for respondents No. 1 to 4, fairly stated that the matter is not governed by the

Civil Services Rules but is governed by the Certified Standing Orders.

11. Learned counsel for the petitioner placed reliance upon the judgment of the Apex Court reported in ***AIR 1985 SC 251 (Workmen of Hindustan Steel Limited and Another Vs. Hindustan Steel Limited and Others)***. It was a case where the inquiry was dispensed with. In that case, Standing Order No.32 was there but in the present case it is not there. The Apex Court held as under:

> *"Standing Order No.32 nowhere obligates the General Manager of a plant belonging to Hindustan Steel Ltd., to record reasons for dispensing with the inquiry as prescribed by S.O. 31. On the contrary, the language of S.O. 32 enjoins a duty upon the General Manager to record reasons for his satisfaction why it was inexpedient or against the interest of the security of the State to continue to employ the workman. Reasons for dispensing with the inquiry and reasons for not continuing to employ the workman stand wholly apart from each other. A Standing Order which confers such arbitrary, uncanalised and drastic power to dismiss an employee by merely stating that it is inexpedient or against the interest of the security to continue to employ the workman are violative of the basic requirement of natural justice inasmuch as the General Manager can impose penalty of such a drastic nature as to affect the livelihood and put a stigma on the character of the workman without recording reasons why disciplinary inquiry is dispensed with and what was the misconduct alleged against the employee. It is time for such a public sector undertaking as Hindustan Steel Ltd., to recast S.O.32 and to bring it in tune with the philosophy of the Constitution."*

12. Learned counsel for the petitioner further placed reliance upon the judgment of the Apex Court in the case of ***Sur Enamel and Stamping Works Ltd. vs. The Workmen*** reported in ***AIR 1963 SC 1914***. The Apex Court has held as under :

> *"An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges leveled against him, (ii) the witnesses are examined – ordinarily in the presence of the employee – in respect of the charges, (iii) the employee is given a fair opportunity to cross examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report."*

It is submitted that in the present case the aforesaid compliance has not been made.

13. Learned counsel for the petitioner also placed reliance upon the judgment of the Apex Court in the case of ***M/S Glaxo Laboratories (I.) Ltd. vs. Presiding Officer, Labour Court, Meerut and others*** reported in ***AIR 1984 SC 505***. The Apex Court has held as under:

> *"..... Certified Standing Orders have more or less a statutory flavour. If that be so, ordinary canons of construction of a statute would be attracted where a dispute arises about the construction or interpretation of a Certified Standing Order. No canon of construction of a statute is more firmly established than this that the purpose of interpretation is*

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> *to give effect to the intention underlying the statute and therefore unless the grammatical construction leads to an absurdity, it is safe to give words their natural meaning because the framer is presumed to use the language which conveys the intention. If two constructions are possible, it is equally well established that the construction which advances the intention of the legislation, remedies the mischief to thwart which it is enacted should be accepted. The Act was enacted for ameliorating the conditions of the workers and therefore conditions of service prescribed thereunder must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief."*

14. Learned counsel for the petitioner placed reliance upon the judgment of the Apex Court in the case of ***Lakshmi Precision Screws Ltd. vs. Ram Bhagat*** reported in ***2002 (6) SCC 552***, wherein the Apex Court has held that the removal of the employee's name from the muster roll is arbitrary. Learned counsel also placed reliance upon the judgment of the Apex Court in the case of ***Uptron India Ltd. vs. Shammi Bhan and another*** reported in ***1998(6) SCC 538*** wherein the Apex Court has held as under :

> *"Any clause in Certified Standing Orders providing for automatic termination of service of a permanent employee, not directly related to 'production' in a factory or industrial establishment, would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically."*

This Court has considered the entire matter and perused the record, which has been produced and admitted position is that regular enquiry as contemplated under Certified Standing Orders has not been held. In view of the settled legal position, the dismissal of the petitioner without holding an inquiry as required under Certified Standing Orders is not sustainable and is liable to be set aside.

15. One question however remains i.e. regarding alternative remedy as it was contended that alternative remedy of raising the dispute before the Labour Court is there.

16. The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction. The Hon. Apex Court in catina of judgments has held so. This Court while considering various judgments of the Hon. Apex Court has also held so in the case of ***K.P. Chandrawanshi and others vs. National Thermal Power Corporation Limited and others*** reported in ***2004(1) CGLJ 268.*** Paragraphs 17,18,19,20 and 21 of the said judgment are pertinent, which are quoted below:

> *"**17.** In this connection, the settled law is that the question of alternative remedy is rule of discretion and not the rule of law. The Hon'ble Apex Court in the matter of ABL International Limited and another Vs. Export Credit Guarantee Corporation of India Limited and others held that,*

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'While entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power (See : Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.'

In para 27 of the above judgment, the Court has held that 'following legal principles emerge as to the maintainability of a writ petition :-

a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

c) A writ petition involving a consequential relief of monetary claim is also maintainable.'

18. *Therefore, in view of the above judgment of the Hon'ble Apex Court, the writ petition is also maintainable where some disputed questions of facts arise for consideration and also in appropriate cases where the writ petition is against a State or an instrumentality of a State arising out of a contractual obligation is maintainable. The petitioners' case is that they were appointed by the NTPC and their appointment letters contain the terms and conditions of the service. Now in violation of those terms and conditions the services*

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of the petitioners are being transferred to BALCO. Therefore, in the above circumstances, we are of the opinion that the writ petitions are maintainable. In the present writ petitions the only question involved is of the interpretation of various appointment letters, the agreements entered into between the NTPC & BALCO and that the NTPC is acting against the contractual obligations arising out of the terms and conditions of their appointment.

19. *In the matter of Radha Samantha Vs. Bank of India and others the Hon'ble Apex Court held that :--*

> *'The powers under Article 226 could be exercised for the enforcement of fundamental rights and also for any other purpose. It was, therefore, open to the Single Judge to issue an appropriate direction to the respondent Bank, if otherwise justifiable on facts. It was also not improper for the Single Judge to look into undisputed documents and to infer as to the status of employment of the appellant. Examination of undisputed facts is not debarred in a proceeding under Article 226.'*

The Hon'ble Apex Court further goes to hold that

> *'Powers under Article 226 of the Constitution could be exercise for the enforcement of fundamental rights available under Part III of the Constitution and also for any other purpose. High Courts have often exercised their power under Article 226 of the Constitution for enforcement of a legal right. It is, therefore, open to the learned Single Judge to issue an appropriate direction to the respondent Bank, if otherwise justifiable on facts. To make matters clear, we may cite Style (Dress Land) Vs. Union Territory, Chandigarh in which this Court held that :--*
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> > *'Action of renewability should be gauged not on the nature of function but public nature of the body exercising that function and such action shall be open to judicial review even if it pertains to the contractual field.'*

20. *In the matter of Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. and others, the Hon'ble Apex Court held that*

'The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.'

21. *In the instant case, the petitioners have challenged the contractual obligations and also that some of the employees of BCPP have been transferred to other projects of the NPTC, whereas, the petitioners are not being adjusted, therefore, this action of NTPC is arbitrary, unreasonable, and violative of Article 14 of the Constitution of India. Therefore, the writ petitions are maintainable, if it is otherwise justifiable on facts and writ can be issued for any other purpose also. In view of the above laws laid down by the Hon'ble Apex Court, we are of the opinion that the objections raised by the learned counsel for the respondents about the maintainability of these writ petitions is not sustainable."*

This Court has considered and is of the opinion that the objection regarding maintainability is not sustainable.

17. Having examined the entire matter, in the opinion of this Court, this is an appropriate case where the principles of natural justice have been violated and the dismissal from service is per se arbitrary and in contravention of the Certified Standing Orders. Accordingly, the impugned order dated 30-12-2003 (Annexure-P/3), so far as it relates to dismissal from service, is set aside with liberty to the respondents to hold an inquiry in accordance with law. It is however directed that the petitioner, who was placed under suspension pursuant to

the order Annexure-P/1 shall continue to remain under suspension till the inquiry is completed.

18. Learned Senior Counsel appearing for respondents no.1 to 4 submitted that if the inquiry is to be held, it may be from the stage where it was left.

19. So far as the aforesaid aspect is concerned, suffice it to say it is directed that the inquiry be held in accordance with law.

Sd/-
Fakhruddin
Judge

27-8-2004

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